IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::JUDGMENT::

JDA AND ORS. VS. NARPAT SINGH AND ORS.

D.B.CIVIL SPECIAL APPEAL (W) NO.157/2005 UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE 1949 READ WITH ARTICLE 226 OF THE CONSTITUTION OF INDIA AGAINST ORDER DATED 5.1.2005 IN SBCWP NO.3033/2002.

DATE OF JUDGMENT :: 15.1.2007

PRESENT
HON'BLE JUSTICE MRS.GYAN SUDHA MISRA
HON'BLE MR. JUSTICE K.C.SHARMA

Mr. Sanjay Pareek for the appellant.
Mr. MF Baig for the respondents.

BY THE COURT:

This appeal has been preferred against the order of the learned Single Judge dated 15.1.2005 by which the writ petition preferred by the appellant-Jaipur Development Authority challenging the award passed by the Labour Court No.2 at Jaipur was dismissed in so far as the challenge to the reinstatement of the respondents-workmen is concerned. However, the writ petition was allowed in so far as grant of consequential benefits after reinstatement is concerned as the learned Single Judge was pleased to hold that the respondents-workmen although shall be entitled for reinstatement as they had discharged the burden of proving that he had worked for

more than 240 days and there had been non-compliance of Section 25-F of the Industrial Disputes Act 1947, they shall not be entitled to any other benefits prior to the date of award. As a consequence, the appellant reinstated the respondents-workmen in service but preferred an appeal against the order granting consequential benefits.

Challenging the order of the learned Single Judge, learned counsel for the appellant-JDA submitted that the impugned order of the learned Single Judge is erroneous even in regard to the reinstatement of the workmen in view of the authorities of the Supreme Court delivered in the matter of Raj. State Ganganagar Sugar Mills Ltd. Vs. State reported in 2004 (8) SCC 161 as also in the matter of M.P.Electricity Board Vs. Hariram reported in 2004 (8) SCC 246 wherein the learned Judges of the Apex Court had been pleased to hold that the burden regarding counting of 240 days is to be discharged by the workmen and not by the employer and therefore the respondents-workmen were under a legal obligation to discharge the burden that they had completed 240 days. Hence the Tribunal as also the learned Single Judge were not legally justified in ordering for reinstatement of the respondents-

workmen.

We have tested this part of the argument of the counsel for the appellant after scrutinising the award of the Labour Court from which it can be inferred that the respondents-workmen were able to prove from the muster-roll that they had discharged duties for 240 days as they had also filed an application in regard to the number of working days which did not find mention in the muster-roll. Thus, the burden shifted on the appellant-JDA in regard to the number of working days for which the appellants had worked as to why they were missing in the muster-roll which has not been discharged. Therefore, we agree with the finding of fact recorded by the Labour Court which has been accepted by the learned Single Judge that the respondents-workmen had duly discharged the burden of proving that they had worked for 240 days and we find no good reason to interfere with the same at the stage of special appeal. Thus the order of reinstatement which has been allowed to remain intact by the learned Single Judge requires no interference. We, therefore, dismiss this appeal at the admission stage itself.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

PCG